

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

COLUMBIA PICTURES INDUSTRIES,)	CV 06-5578 SVW (JCx)
INC., <i>et al.</i> ,)	
)	ORDER GRANTING PLAINTIFFS'
Plaintiffs,)	MOTION FOR PERMANENT INJUNCTION
)	[395]
v.)	
)	
GARY FUNG, <i>et al.</i> ,)	
)	
Defendants.)	
<hr/>)	

I. BACKGROUND

On December 21, 2009, the Court granted Plaintiffs' Motion for Summary Judgment on Liability (the "Order," docket no. 391), finding that Defendants Gary Fung and Isohunt Web Technologies, Inc. (collectively, "Defendants") induced infringement of Plaintiffs' copyrights in violation of United States copyright law. See Metro-Goldwyn-Mayer Studios, Inc. v. Grokster, 545 U.S. 913, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005). The Court found that "evidence of Defendants' intent to induce infringement is overwhelming and beyond

1 reasonable dispute," Order at 25, and therefore that "Defendants'
2 inducement liability is overwhelmingly clear," id. at 15.

3 On the issue of a permanent injunction, the Court has considered
4 the briefs filed by the parties, the arguments presented at the March
5 22, 2010 hearing on this matter, and the proposed language and
6 arguments presented by the parties in response to the Court's proposed
7 order. Based on the foregoing and all matters of record in this
8 action, pursuant to Federal Rule of Civil Procedure 65 and 17 U.S.C. §
9 502, the Court enters a Permanent Injunction in favor of Plaintiffs and
10 against Defendants in accordance with the terms contained herein.

11 **II. DISCUSSION**

12 The Court concludes that a permanent injunction should issue to
13 restrain further infringement of Plaintiffs' copyrights. Plaintiffs
14 have satisfied their burden under eBay Inc. v. MercExchange, L.L.C.,
15 547 U.S. 388, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006), "(1) that
16 [they have] suffered an irreparable injury; (2) that remedies available
17 at law, such as monetary damages, are inadequate to compensate for that
18 injury; (3) that, considering the balance of hardships between the
19 plaintiff[s] and defendant[s], a remedy in equity is warranted; and (4)
20 that the public interest would not be disserved by a permanent
21 injunction." Id. at 391.

22 **A. Irreparable Harm**

23 Plaintiffs have demonstrated that they have suffered irreparable
24 harm, and would suffer further irreparable harm from Defendants'
25 continued infringement, in three independent ways. First, given the
26 staggering volume of infringement of Plaintiffs' copyrights, it is
27 extremely unlikely that Defendants will be able fully to compensate
28

1 Plaintiffs monetarily for the infringements Defendants have induced in
2 the past, or the infringements they could induce in the future. Metro-
3 Goldwyn-Mayer Studios, Inc. v. Grokster, 518 F. Supp. 2d 1197, 1217
4 (C.D. Cal. 2007) ("Grokster V"). Second, given the way in which
5 Defendants' system works, when Defendants' end-users download one of
6 Plaintiffs' works, the end-users automatically and simultaneously
7 further distribute the work to innumerable others as a required part of
8 the download process; additionally, at the conclusion of the download,
9 Defendants' end-users obtain an unprotected digital copy of Plaintiffs'
10 work that those end-users can further distribute indefinitely at will.¹
11 Thus, when Defendants induce infringement, "Plaintiffs' copyrighted
12 works can be unstoppably and near-instantaneously infringed throughout
13 the computer-literate world with the files obtained by [Defendants']
14 end-users. Plaintiffs' power to control their rights has been so
15 compromised by the means through which [Defendants] encouraged end-
16 users to infringe (digital files plus the internet) that the inducement
17 amounts to irreparable harm." Id. at 1218-19. Third, it is axiomatic
18 that the availability of free infringing copies of Plaintiffs' works
19 through Defendants' websites irreparably undermines the growing

21 ¹ Defendants argue that the Supreme Court's holding in Grokster
22 was limited solely to "devices" that induce infringement. Defendants
23 further argue that they are immune from an injunction against their
24 "activities." (Opp. at 6-7, 19.)

25 Defendants' argument lacks merit. Nothing in Grokster requires
26 that there be a "device"; the central inquiry is based on the
27 defendants' "purposeful, culpable expression and conduct." Grokster,
28 545 U.S. at 937. The Supreme Court's holding in Grokster was not
limited solely to "devices." The Supreme Court used terms such as
"device," "product," and "tool" interchangeably. Id. at 940 n.13.
In addition, the clear import of the Supreme Court's opinion was that
a defendant may be secondarily liable for his conduct and activities,
separate and apart from any products, devices, or tools he
distributes.

legitimate market for consumers to purchase access to the same works. E.g., Metro-Goldwyn-Mayer Studios Inc. v. Grokster, Ltd., 545 U.S. 913, 928-29, 125 S. Ct. 2764, 162 L. Ed. 2d 781 (2005) ("digital distribution of copyrighted material threatens copyright holders as never before, because every copy is identical to the original, copying is easy, and many people (especially the young) use file-sharing software to download copyrighted works"); A&M Records, Inc. v. Napster, Inc., 239 F.3d 1004, 1017 (9th Cir. 2001) (citing "Napster's deleterious effect on the present and future digital download market").

B. Inadequate Remedy at Law

For many of the same reasons,² Plaintiffs have demonstrated that they do not have an adequate remedy at law for the harm that has been or could be caused by Defendants' infringement. "'Damages are no remedy at all if they cannot be collected.'" Grokster V, 518 F. Supp. 2d at 1219 (quoting Douglas Laycock, *The Death of the Irreparable Injury Rule*, 103 Harv. L. Rev. 687, 716 (1990)). Likewise, "[a] legal remedy is inadequate if it would require a multiplicity of suits." *Id.* at 1220 (quoting Laycock, 103 Harv. L. Rev. at 714) (alteration in original).

Here, as in Grokster V, "[t]he irreparable harm analysis centers on two basic themes: (1) [Defendant] has and will continue to induce far more infringement than it could ever possibly redress with damages; and (2) Plaintiffs' copyrights (especially those of popular works) have and will be rendered particularly vulnerable to continuing infringement on an enormous scale due to [Defendant's] inducement." Grokster V, 518

² The "irreparable harm" and "inadequate remedies at law" inquiries are essentially identical. Grokster V, 518 F. Supp. 2d at 1219

1 F. Supp. 2d at 1217. Both of these elements are present in this case
2 as well.

3 In the Summary Judgment Order, the Court concluded that the
4 evidence "strongly suggests that some 2.5 million United States
5 citizens visited Defendants' websites each month" and that "at one
6 point, Defendants' websites were accessed over 50 million times from
7 the United States in a single month." Order at 41. The Court also
8 concluded that Plaintiffs' statistical evidence showed that over 90% of
9 the downloads using Defendants' websites were associated with
10 copyright-infringing materials. Accord A& M Records, Inc. v. Napster,
11 Inc., 239 F.3d 1004, 1013 (9th Cir. 2001)(relying on statistical
12 evidence to show extent of infringement); Grokster V, 518 F. Supp. 2d
13 at 1217-19 (same). Defendants have introduced no evidence to rebut
14 these showings.

15 In addition, given the multiplicity of infringements of
16 Plaintiffs' works caused by a single user downloading a single dot-
17 torrent file from Defendants' sites, see Order at 6-7, it would be
18 untenable for Plaintiffs to track and proceed against each infringing
19 end-user. Additionally, Plaintiffs would not be able to recover
20 damages from Defendants for the inevitable derivative infringements
21 that would occur outside Defendants' websites when copyrighted content
22 acquired as a result of Defendants' inducement is further distributed
23 by Defendants' users. These further infringements are a continuing
24 threat, making remedies at law insufficient to compensate for
25 Plaintiffs' injuries. The only realistic method for remedying such
26 future harm from Defendants' inducement is by way of a permanent
27 injunction. Grokster V, 518 F. Supp. 2d at 1220.

1 **C. Balance of Hardships**

2 The balance of hardships between Defendants and Plaintiffs also
3 warrants the issuance of a permanent injunction. As described, absent
4 an injunction, Plaintiffs would suffer a severe hardship as a result of
5 Defendants' inducement of infringement. The injunction being ordered
6 by the Court would not pose a corresponding hardship on Defendants.
7 The Court has already found that Defendants' websites are used
8 overwhelmingly for copyright infringement, with upwards of 95% of all
9 dot-torrent files downloaded from Defendants' websites corresponding to
10 works that are infringing or at least highly likely to be infringing.
11 Summary Judgment Order at 10-11. Obviously, the harm to Defendants
12 from no longer being able to exploit and profit from that infringement
13 is not a hardship the Court need consider. See Cadence Design Sys.,
14 Inc. v. Avant! Corp., 125 F.3d 824, 829 (9th Cir. 1997) (defendant
15 "cannot complain of the harm that will befall it when properly forced
16 to desist from its infringing activities") (citation and internal
17 quotation marks omitted). Beyond that, the Court's injunction is
18 limited to Plaintiffs' copyrights and will not substantially interfere
19 with any claimed non-infringing aspects of Defendants' system.

20 The Court is further persuaded that Defendants would likely
21 continue to induce infringement in the absence of a permanent
22 injunction. As this Court observed in Grokster:

23 [A] successful inducer will sometimes have no need to repeat the
24 infringing message ad infinitum. This is especially likely to be
25 the case where the product in question is overwhelmingly used for
26 infringing purposes, and requires little or no specialized
27 training to operate. At a certain point, the inducer can simply
28 continue to distribute the product without any additional active
encouragement, recognizing that the marketplace will respond in
turn. Thus, once the market has internalized the inducer's
promotion of infringement, the resulting infringements should be

1 attributable to that defendant even though he/she no longer
2 chooses to actively promote that message.

3 Grokster V, 518 F. Supp. 2d at 1233-34.

4 The Court finds those observations fully applicable to this case.
5 For years, Defendants operated their websites as popular destinations
6 for copyright infringement and etched their niche in the market for
7 infringement. Defendants were enormously successful in building a
8 user-base of infringers that, by Defendants' own account, number in the
9 millions. See Order at 42. As stated, the evidence of Defendants'
10 illegal objective was "overwhelming" and the resulting amount of
11 infringement of Plaintiffs' copyrights has been staggering.
12 Defendants' websites "remain[] inexorably linked to [Defendants']
13 historical efforts to promote infringement." Grokster V, 518 F. Supp.
14 2d at 1235. Absent an injunction directing Defendants to prevent
15 infringement of Plaintiffs' works, it is highly likely that Defendants'
16 existing users and new users would continue to use Defendants' system
17 to infringe Plaintiffs' copyrights.

18 Moreover, the Court's conclusion that Defendants are likely to
19 continue to induce copyright infringement is warranted by (1) the great
20 extent to which Defendants have actively encouraged copyright
21 infringement in the past; (2) the fact that Defendants' very business
22 model, at its core, depends upon copyright infringement, and Defendants
23 would financially benefit from further infringement; and (3) the fact
24 that, even since the Court's Order finding Defendants liable for
25 inducing copyright infringement, Defendants have not taken meaningful
26 steps to mitigate the infringement of Plaintiffs' works. Defendants'
27 proposed "primal" or "lite" website contains all of the same indexing
28 and searching functions as the original websites, only with a different

1 interface for the users to operate. (See Servodido Reply Decl., Ex. G,
2 at 15-21.) In fact, Defendants have not even ceased all of the active
3 conduct of encouraging and promoting infringement which the Court
4 specifically identified in its Summary Judgment Order. A number of
5 features mentioned in this Court's Summary Judgment Order remain
6 active: a "top 20" TV shows and movies feature; a "top searches"
7 feature (which invariably includes all, or almost all, copyrighted
8 works); and access to Plaintiffs' works that are specifically
9 identified as the subject of this action. (Pls. Reply at 10.)
10 Defendant Fung has affirmatively stated that he will not take steps to
11 prevent infringement on his websites unless he is ordered to do so by
12 this Court. (Fung interview, quoted in Defs. Opp. at 3.) In short,
13 Defendants' past and present statements and conduct establish that
14 Defendants "fully intend[] to continue [their] distribution of the"
15 tools that are central to their inducement of copyright infringement.
16 See Grokster V, 518 F. Supp. 2d at 1229-30.

17 As this Court explained at length in Grokster V, a defendant who
18 is liable for inducing infringement may be enjoined from **distributing**
19 his products in the future, **even if** he no longer promotes an inducing
20 message. Although the quote is lengthy, it is worth setting forth in
21 full:

22 The Court is mindful of the following critical passage from the
23 Supreme Court's opinion in this case:

24 It is not only that encouraging a particular consumer to
25 infringe a copyright can give rise to secondary liability for
26 the infringement that results. Inducement liability goes
27 beyond that, and the distribution of a product can itself
28 give rise to liability where evidence shows that the
distributor intended and encouraged the product to be used to
infringe. In such a case, the culpable act is not merely the
encouragement of infringement but also the distribution of
the tool intended for infringing use.

Grokster, 545 U.S. at 940 n. 13, 125 S.Ct. 2764.

1 In effect, the "culpable act," which induces third parties to
 2 infringement, certainly manifests itself once two components are
 3 present--distribution and promotion/ encouragement. See
 4 Amazon.com, 487 F.3d at 727 n. 11; Visa, 494 F.3d at 800-01. It is
 5 important to recognize that the Supreme Court did not impose any
 6 strict timing relationship between specific acts promoting
 7 infringements, distribution, and the direct infringements
 8 themselves. For a party to be liable for inducement, distribution
 9 may begin prior to any promotion of infringement, distribution and
 10 promotion can occur at the same time, and most critically,
 11 **distribution can follow past promotion.** This highlighted portion
 12 of the above sentence is crucial. As a matter of common sense, a
 13 successful inducer will sometimes have no need to repeat the
 14 infringing message ad infinitum. This is especially likely to be
 15 the case where the product in question is overwhelmingly used for
 16 infringing purposes, and requires little or no specialized
 17 training to operate. At a certain point, the inducer can simply
 18 continue to distribute the product without any additional active
 19 encouragement, recognizing that the marketplace will respond in
 20 turn.

21 Thus, once the market has internalized the inducer's
 22 promotion of infringement, the resulting infringements should be
 23 attributable to that defendant even though he/she no longer
 24 chooses to actively promote that message. There is no difference
 25 between these infringements and those that are consummated while
 26 the defendant is still engaging in the active promotion of
 27 infringement.

28 Critically, Justice Souter recognized the importance of this
 relationship between past promotion and future distribution during
 the Supreme Court's oral argument in this case:

But I don't ... understand how you can separate the past from
 the present in that fashion. One, I suppose, could say,
 "Well, I'm going to make inducing remarks Monday through
 Thursday, and I'm going to stop, Thursday night." The sales
 of the product on Friday are still going to be sales which
 are the result of the inducing remarks Monday through
 Wednesday. And you're asking, in effect--you're asking us--to
 ignore Monday through Thursday.

Metro-Goldwyn-Mayer Studios, Inc., v. Grokster, Ltd., No. 04-480,
 Mar. 29, 2005 ("Oral Argument Transcript"), at 30. Thus,
 distribution of a product capable of substantial noninfringing
 uses, even after the promotion/encouragement of infringement
 ceases, can by itself constitute inducement. StreamCast's future
 distribution is undoubtedly connected to past promotional efforts.
 In its September 27, 2006 Order, this Court recounted in detail,
 among other undisputed facts, StreamCast's efforts to promote its
 software to the Napster market as a mechanism for infringing
 Plaintiffs' copyrighted works. Grokster, 454 F.Supp.2d at 985-86.
 These promotional efforts proved to be wildly successful,
 especially because StreamCast marketed itself to Napster users at
 a particularly important juncture--while Napster was in imminent
 legal jeopardy. End-user infringement exponentially increased,
 evidencing that StreamCast's express and implied messages of

1 promotion were received, absorbed, and responded to by the market.
 2 Or as more recently stated by the Ninth Circuit:

3 The software systems in ... Grokster were engineered,
 4 disseminated, and promoted explicitly for the purpose of
 5 facilitating piracy of copyrighted music and reducing
 6 legitimate sales of such music to that extent. Most ... users
 7 understood this and primarily used those systems to purloin
 8 copyrighted music. Further, the ... operators explicitly
 9 targeted then-current users of the Napster program by sending
 10 them ads for its OpenNap program.

11 Visa Int'l Serv. Ass'n, 494 F.3d at 801. StreamCast's revenues
 12 skyrocketed as a result. Furthermore, StreamCast could not
 13 reasonably claim ignorance of the infringements perpetrated by
 14 Morpheus endusers. Grokster, 454 F.Supp.2d at 992.

15 StreamCast has etched its niche in the market for
 16 infringement. Under the facts of this case, and the doctrinal
 17 point raised by Justice Souter, neither the simple passage of time
 18 nor the entry of judgment in this case can remedy StreamCast's
 19 past promotion as the "next Napster." The fact that a permanent
 20 injunction is imposed also does not leave Morpheus magically
 21 reborn as a product safe for unfiltered distribution under Sony.
 22 As stated by Justice Scalia to StreamCast's counsel at oral
 23 argument, "the point is that those past acts [of encouragement]
 24 are what have developed your client's current clientele." Oral
 25 Argument Transcript at 29.

26
 27 StreamCast is not being "punished" for its past actions;
 28 rather, StreamCast's past activity is relevant to what future
 actions constitute inducement going forward.
 An unfiltered Morpheus, which StreamCast intends to distribute if
 provided the opportunity, necessarily capitalizes on and remains
 inexorably linked to its historical efforts to promote
 infringement. The bell simply cannot be unrung. Accordingly,
 Morpheus's connection to the past promotion of infringement means
 that StreamCast's continued distribution of Morpheus alone
 constitutes inducement. This Court is empowered to regulate
 Morpheus under 17 U.S.C. § 502(a) in order to prevent this
 distribution from causing future harm to Plaintiffs' rights.

29 Grokster V, 518 F. Supp. 2d at 1233-35.

30 **D. Public Interest**

31 Finally, the Court agrees that the public interest will be served
 32 with a permanent injunction, since it will protect Plaintiffs'
 33 copyrights against increased and unrestrained infringement. Id. at
 34 1222. Although Defendants argue that the BitTorrent "ecosystem" would
 35 be harmed by the present injunction, Defendants have not introduced any
 36 evidence to show the harmful "wider implications" of this injunction,
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1 nor have they shown that further discovery is warranted because the
2 relevant evidence is exclusively within Plaintiffs' possession. (See
3 Opp. at 15-17.) In addition, this injunction is aimed solely at
4 *Defendants'* unlawful use of BitTorrent and similar technology, not at
5 *third parties'* lawful use of BitTorrent and similar technology. The
6 public interest will not be harmed by the injunction.

7 **E. Summary**

8 The Court thus finds that the four part eBay test favors the
9 imposition of a permanent injunction to restrain Defendants'
10 infringement. In its discretion, the Court deems it appropriate for a
11 permanent injunction to issue.

12 In issuing the injunction, the Court is cognizant that "[t]he fact
13 that absolutely perfect compliance is unattainable does not of itself
14 preclude an injunction." Withrow v. Concannon, 942 F.2d 1385, 1388
15 (9th Cir. 1991). "If a violating party has taken 'all reasonable
16 steps' to comply with the court order, technical or inadvert[en]t
17 violations of the order will not support a finding of civil contempt."
18 Gen. Signal Corp. v. Donallco, Inc., 787 F.2d 1376, 1379 (9th Cir.
19 1986) (citation omitted). Ultimately, Defendants have the option – and
20 the burden – of deciding how they will comply with the following
21 injunction. Triad Systems Corp. v. Southeastern Exp. Co., 64 F.3d
22 1330, 1337 (9th Cir. 1995) ("Putting this burden on Southeastern is
23 appropriate because Southeastern is the infringer."), *overruled on*
24 *other grounds by* Gonzales v. Texaco Inc., 344 Fed. Appx. 304, 306 (9th
25 Cir. 2009).

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1 **III. INJUNCTION**

2 It is therefore ORDERED, ADJUDGED, and DECREED that:

3 1. For the purposes of this Permanent Injunction, the following
4 definitions shall apply:

5 (a) "Defendants" shall mean Gary Fung and Isohunt Web
6 Technologies, Inc., whether acting jointly or individually.

7 (b) "Isohunt System" shall mean the websites www.isohunt.com,
8 www.podtropolis.com, www.torrentbox.com, and www.ed2k-it.com, and
9 shall further include any servers, trackers, software, and
10 electronic data that make up or support such websites.

11 (c) "Comparable System" shall mean any website, system or
12 software that provides users access to Plaintiffs' Copyrighted
13 Works, using BitTorrent or any peer-to-peer or other file-sharing
14 or content delivery technology.

15 (d) "Copyrighted Works" shall mean each of those works, or
16 portions thereof, whether now in existence or later created, in
17 which any Plaintiff (or parent, subsidiary or affiliate of any
18 Plaintiff), at the time of Defendants' conduct in question, owns
19 or controls a valid and subsisting exclusive right under the
20 United States Copyright Act, 17 U.S.C. §§ 101 et seq., and which
21 Plaintiffs have identified to Defendants by the title of the work.

22 (e) "Dot-torrent or similar files" shall mean dot-torrent files,
23 magnet links, hash links, or other functionally similar files,
24 links or identifiers.

25 (f) "Infringement-Related Terms" shall mean:
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(i) terms that refer to the titles or commonly understood names of Plaintiffs' Copyrighted Works (for example, the full title or common name of a television series);

(ii) terms that are widely known to be associated with copyright infringement (for example "warez," "Axxo," "Jaybob," "DVD Rips," "Cam," "Telesync," "Telecine," "Screener," or "PPV").

2. Subject to the terms of Paragraph 5 below, Defendants shall be permanently enjoined from knowingly engaging in any of the following activities in connection with the Isohunt System or any Comparable System:

(a) hosting, indexing, linking to, or otherwise providing access to any Dot-torrent or similar files that correspond, point or lead to any of the Copyrighted Works;

(b) assisting with end-user reproductions or transmissions of any of the Copyrighted Works through a tracker server, or any other server or software that assists users in locating, identifying or obtaining files from other users offering any of the Copyrighted Works for transmission; or

(c) hosting or providing access to any of the Copyrighted Works.

Defendants shall be in knowing violation of this paragraph if they fail to act in response to the list of titles as set forth in Paragraph 5.1.

3. Defendants shall immediately and permanently be enjoined from knowingly engaging in any activities having the object or effect of fostering infringement of Plaintiffs' Copyrighted Works, including without limitation, by engaging in any of the following activities:

- 1 (a) advertising or promoting access to or the availability of
- 2 Plaintiffs' Copyrighted Works;
- 3 (b) encouraging or soliciting users to reproduce or distribute
- 4 Plaintiffs' Copyrighted Works;
- 5 (c) encouraging or soliciting users to upload, post or index any
- 6 Dot-torrent or similar files that correspond, point or lead to any
- 7 of the Copyrighted Works;
- 8 (d) encouraging or soliciting users to link to copies of
- 9 Plaintiffs' Copyrighted Works;
- 10 (e) providing technical assistance or support services to users
- 11 engaged in infringement of, or seeking to infringe, Plaintiffs'
- 12 Copyrighted Works;
- 13 (f) creating, maintaining, highlighting or otherwise providing
- 14 access to lists of "top" downloads of, or search terms for, Dot-
- 15 torrent or similar files that include, refer to or signal the
- 16 availability of Plaintiffs' Copyrighted Works;
- 17 (g) including Infringement-Related Terms in metadata for any
- 18 webpages;
- 19 (h) creating, maintaining or providing access to browsable
- 20 website categories of Dot-torrent or similar files using or based
- 21 on Infringement-Related Terms;
- 22 (i) organizing, harvesting or categorizing Dot-torrent or similar
- 23 files using or based on Infringement-Related Terms;
- 24 (j) soliciting or targeting a user base generally understood, in
- 25 substantial part, to be engaging in infringement of, or seeking to
- 26 infringe, Plaintiffs' Copyrighted Works;
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1 (k) transferring or redirecting users of the Isohunt System to
2 any other service that, directly or indirectly, provides access to
3 unauthorized copies of Plaintiffs' Copyrighted Works;

4 (l) indexing or providing access to Dot-torrent or similar files
5 harvested or collected from well-known infringing source sites,
6 such as "The Pirate Bay";

7 (m) soliciting revenue from third party advertisers or
8 advertising brokers based on (or by referring to or highlighting)
9 the availability of Plaintiff's Copyrighted Works.

10 4. The terms of Paragraphs 2 and 3 of this Permanent Injunction shall
11 not apply to any Copyrighted Work for which Defendants have obtained
12 express written authorization or license for the use being made of such
13 Copyrighted Work from each Plaintiff that owns or controls the rights
14 to such Copyrighted Work, provided such authorization or license is in
15 force and valid at the time of Defendants' use of the Copyrighted Work.

16 5. Defendants shall not be in violation of this Permanent Injunction
17 as to Copyrighted Works that Plaintiffs, or representatives of
18 Plaintiffs, have not (a) identified to Defendants by title of the work,
19 and (b) represented to Defendants that, based on a reasonable review
20 and good faith belief, a Plaintiff (or a parent, subsidiary or
21 affiliate of a Plaintiff) owns or controls a valid and subsisting
22 exclusive right under the United States Copyright Act, 17 U.S.C. §§ 101
23 et seq. in the work (a "list of titles").

24 (a) Plaintiffs shall be permitted to supplement and update their
25 list of titles without restriction, including without limitation
26 with works soon-to-be but not yet released to the public.

1 (b) Plaintiffs shall provide Defendants with the list of titles
2 in electronic form.

3 (c) Defendants shall promptly provide Plaintiffs with a valid
4 email address to use for the lists of titles, and Defendants shall
5 immediately notify Plaintiffs in writing of any change in such
6 email address. A list of titles shall be deemed delivered when
7 sent to the most current email provided by Defendants.

8 (d) With regard to the initial list of titles provided by
9 Plaintiffs pursuant to this Permanent Injunction, Defendants shall
10 be required to comply with the terms of Paragraph 2 above no later
11 than 14 calendar days from the date Plaintiffs deliver the initial
12 list of titles.

13 (e) For all subsequent lists of titles, Defendants shall be
14 required to comply with the terms of Paragraph 2 above no later
15 than 24 hours from the time Plaintiffs deliver the list of titles.

16 (f) In the event a commercial vendor or other third party becomes
17 able to provide Defendants with a reliable list of Plaintiffs'
18 Copyrighted Works, Plaintiffs may apply to the Court for an order
19 modifying this Permanent Injunction to relieve them of the
20 obligation of providing Defendants with lists of titles, even if
21 there is a cost to Defendants of securing the lists of titles from
22 the commercial vendor or third party.

23 6. Prior to Defendants entering into any agreement or transaction
24 whatsoever to sell, lease, license, assign, convey, give away,
25 distribute, loan, barter, hypothecate, encumber, pledge or otherwise
26 transfer, whether or not for consideration or compensation, any part of
27 the software, source code, data files, other technology, domain names,
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1 trademarks, brands, or Dot-torrent or similar files used in connection
2 with the Isohunt System or any Comparable System (a "Transfer of
3 Isohunt-Related Assets"), Defendants shall require, as a condition of
4 any such transaction, that the transferee:

5 (a) submit to the Court's jurisdiction and venue;

6 (b) agree to be bound by the terms herein; and

7 (c) apply to the Court for an order adding it as a party to this
8 Permanent Injunction.

9 Defendants shall not permit any Transfer of Isohunt-Related Assets to
10 close until the Court has entered such an order. Defendants further
11 shall not engage in a Transfer of Isohunt-Related Assets with or to any
12 person whom Defendants know to be engaged in, or intending to be
13 engaged in, conduct that would violate the terms of Paragraphs 2 or 3
14 above.

15 7. This Permanent Injunction shall bind Gary Fung, individually, and
16 Isohunt Web Technologies, Inc., and their officers, agents, servants,
17 employees, attorneys, successors, and assigns, and all those in active
18 concert or participation with any of them, who receive actual notice of
19 this Permanent Injunction by personal service or otherwise. Defendants
20 shall provide a copy of this Permanent Injunction to each of their
21 respective officers, agents, servants, employees, attorneys,
22 principals, shareholders, current and future administrators or
23 moderators for the Isohunt System (or Comparable System) or any online
24 forums associated with the Isohunt System (or Comparable System), and
25 any domain name registries or registrars responsible for any domain
26 names used in connection with the Isohunt System (or Comparable
27 System).
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1 8. Nothing in this Permanent Injunction shall limit the right of
2 Plaintiffs to seek to recover damages under 17 U.S.C. § 504, or costs,
3 including attorneys' fees, under 17 U.S.C. § 505.

4 9. For purposes of clarity, as the Court has personal jurisdiction
5 over Defendants and has concluded that the conduct of Defendants
6 induces infringement of Plaintiffs' Copyrighted Works in the United
7 States under the copyright laws of the United States, this Permanent
8 Injunction enjoins the conduct of Defendants wherever they may be
9 found, including without limitation in Canada.

10 10. The Court further clarifies that this injunction covers any acts
11 of direct infringement, as defined in 17 U.S.C. § 106, that take place
12 in the United States. To the extent that an act of reproducing,
13 copying, distributing, performing, or displaying takes place in the
14 United States, it may violate 17 U.S.C. § 106, subject to the generally
15 applicable requirements and defenses of the Copyright Act. As
16 explained in the Court's December 23, 2009 Order, "United States
17 copyright law does not require that both parties be located in the
18 United States. Rather, the acts of uploading and downloading are each
19 independent grounds of copyright infringement liability." Summary
20 Judgment Order at 19. Each download or upload of Plaintiffs'
21 copyrighted material violates Plaintiffs' copyrights if even a single
22 United States-based user is involved in the "swarm" process of
23 distributing, transmitting, or receiving a portion of a computer file
24 containing Plaintiffs' copyrighted content.

25 11. Violation of this Permanent Injunction shall expose the
26 Defendants, and all others properly bound by it, to all applicable
27 penalties, including for contempt of Court.
28

1 12. The Court shall maintain jurisdiction over this action for the
2 purposes of enforcing this Permanent Injunction and for amending the
3 injunction in response to future changes in the law or factual
4 circumstances. See Grokster V, 518 F. Supp. 2d at 1239-40 (collecting
5 cases).

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10 IT IS SO ORDERED.
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12
13 DATED: May 20, 2010
14

A handwritten signature in dark ink, appearing to read "Stephen V. Wilson", is written over a horizontal line.

STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE